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After the referendum: Establishing the Best Outcome for Northern Ireland

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After the EU Referendum:

Establishing the Best Outcome for Northern Ireland

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After the EU Referendum:

Establishing the Best Outcome for Northern Ireland

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Where are we and what might happen next?

The Referendum Result

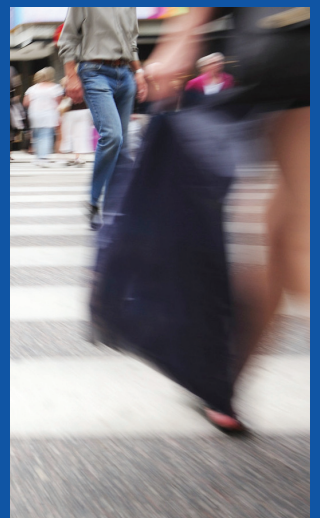
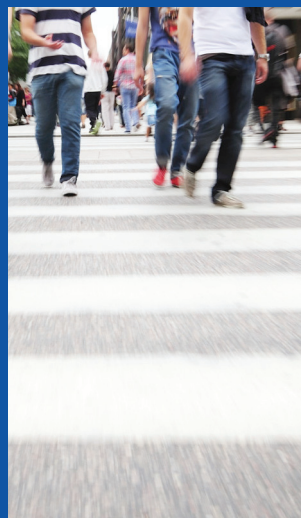
Triggering Article 50

Withdrawal Negotiations

Negotiating the new UK-EU Relationship

Other Negotiations

The role for Northern Ireland in forthcoming negotiations





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Where are we?

On 23 June 2016 the UK government held a referendum asking the question: 'Should the United Kingdom remain a member of the European Union or leave the European Union?'

The Referendum Result

The overall, UK-wide result was: 51.9% 'leave' against 48.1% 'remain'. Turnout was 71.8% with 17.4 million voters voting 'leave' and 16.1 million voters voting 'remain'.

In England and Wales the majority of voters voted 'leave'. In Northern Ireland, as in Scotland and Gibraltar, however, a majority of voters

indicated a desire to remain in the EU. In Scotland, all the counts returned majorities in favour of remain (see map).

On a turnout of 62.7%, a total of 440,707 voters in Northern Ireland opted to remain in the EU; 349,442 voters in Northern Ireland opted to leave the EU.

	Remain		Leave		Turnout
	Total	%	Total	%	
England	13,247,674	46.6	15,187,583	53.4	73.0
Northern Ireland	440,707	55.8	349,442	44.2	62.7
Scotland	1,661,191	62.0	1,018,322	38.0	67.2
Wales	772,347	47.5	854,572	52.5	71.7
Gibraltar	19,322	95.9	823	4.1	83.5
Total	16,141,241	48.1	17,410,742	51.9	72.2

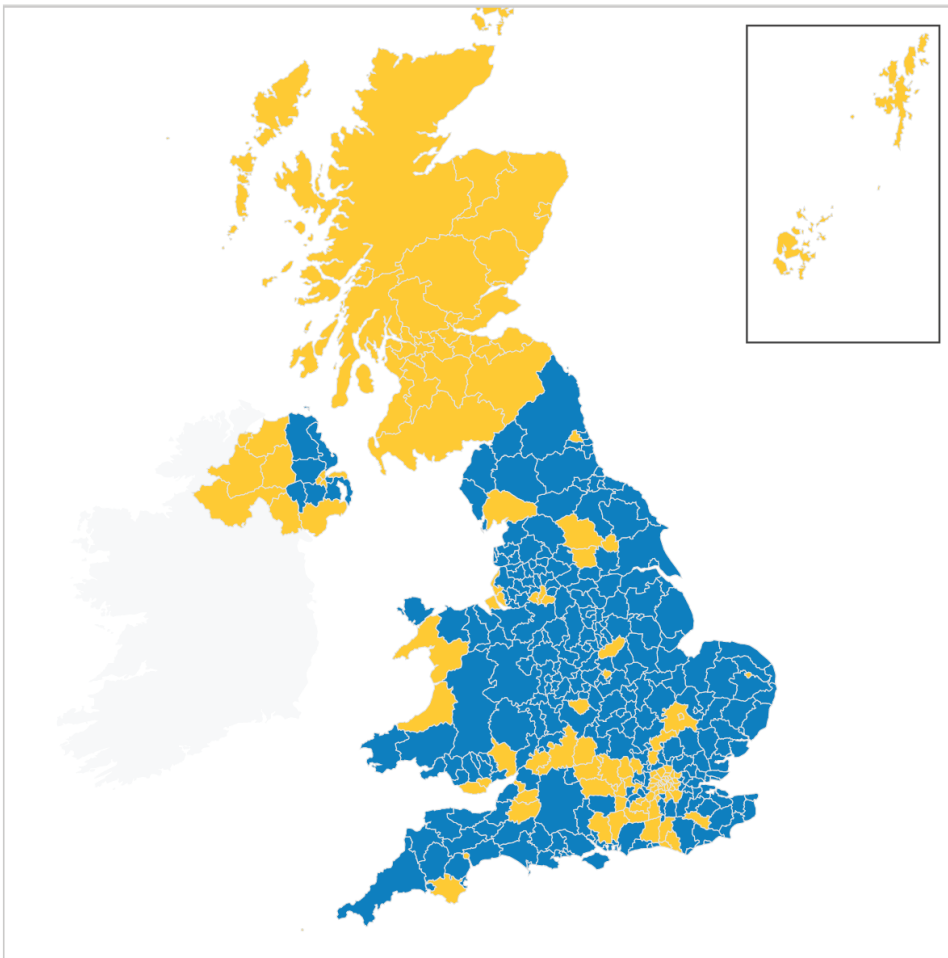
Source: Electoral Commission (2016)

¹ This briefing paper was prepared by Prof. David Phinnemore and Dr. Lee McGowan, both at Queen's University Belfast (QUB). Section 3 draws extensively on the EUDebateNI briefing paper entitled *To Remain or Leave? Northern Ireland and the EU Referendum* produced in November 2015 by a team of academics comprising Prof. David Phinnemore (editor), Dr. Lee McGowan, Prof. Yvonne Galligan (QUB), Dr. Cathal McCall (QUB) and Dr. Mary Murphy (University College Cork).

Where are we and what might happen next?

The EU Referendum Result in the UK

Key: ■ Majority leave ■ Majority remain ■ Tie ■ Undeclared



Source:
BBC News at <http://www.bbc.co.uk/news/uk-politics-36616028>

Where are we and what might happen next?

Triggering Article 50

With the result declared, the UK government was left with the decision of whether and when to formally notify the European Council under Article 50 of the Treaty on European Union (TEU) of its intention to withdraw the UK from the EU.

No immediate decision was taken. Instead, the Prime Minister, David Cameron resigned, leaving the decision to his successor, Theresa May. On taking office on 13 July, May declared that 'Brexit means Brexit' signalling an intention to negotiate the terms of withdrawal. To this end a new Ministerial post of 'Secretary of State for Exiting the European Union' was created with David Davis, a leading 'leave' supporter – a so-called 'Brexiteer' – being appointed. The establishment of a Department for Exiting the European Union duly followed. Other 'Brexiters' were given leading roles in the new government. Boris Johnson, co-leader of the 'leave' campaign was appointed

Foreign Secretary, and Liam Fox, was given the newly created post of Secretary of State for International Trade.

However, as of August 2016, the UK government had still not notified the European Council under Article 50 of its intention to withdraw the UK from the EU. The expectation is that Article 50 will not be triggered until 2017 at the earliest.

The absence of formal notification is significant. Without it, negotiations on withdrawal from the EU cannot formally begin. This is the clear view of the UK's partners in the EU. At a meeting of the leaders of the other 27 member states on 29 June 2016 (see Box), so during the week after the referendum, they made their position clear: 'There can be no negotiations of any kind before this notification has taken place'.

Informal Meeting of EU(27) Heads of Government and State

Brussels, 29 June 2016

Statement

1. We, the Heads of State or Government of 27 Member States, as well as the Presidents of the European Council and the European Commission, deeply regret the outcome of the referendum in the UK but we respect the will expressed by a majority of the British people. Until the UK leaves the EU, EU law continues to apply to and within the UK, both when it comes to rights and obligations.

2. There is a need to organise the withdrawal of the UK from the EU in an orderly fashion. Article 50 TEU provides the legal basis for this process. It is up to the British government to notify the European Council of the UK's intention to withdraw from the Union. This should be done as quickly as possible. There can be no negotiations of any kind before this notification has taken place.

3. Once the notification has been received, the European Council will adopt guidelines for the negotiations of an agreement with the UK. In the further process the European Commission and the European Parliament will play their full role in accordance with the Treaties.

Where are we and what might happen next?

There are three main reasons for the delay in the UK government triggering Article 50 and therefore negotiations on withdrawal. The first is a lack of clarity of whether the Prime Minister has the power to take the decision to notify the European Council of the UK government's intention to withdraw the UK from the EU or whether there needs to be a vote in Parliament authorizing the notification. There are currently a range of private legal actions arguing that only Parliament has the

authority to invoke Article 50. At the opening of the first of these legal challenges on 18 July, government lawyers conceded that any judgement was likely to be appealed up to the Supreme Court, and that consequently the Prime Minister is not expected to trigger Article 50 before the end of 2016 and more likely in early 2017. Legal challenges were also either threatened or lodged with the High Court in Belfast (see Box).

Challenging Brexit in Northern Ireland

Solicitors for a cross-community group including politicians and human rights activists threatened in July to take a judicial review before the High Court in Belfast unless the UK government addresses a range of obligations before triggering Article 50. The group argued that the consent of the Northern Ireland Assembly is required. It also argued that the UK government is obliged as part of Brexit to safeguard 'the unique requirements of Northern Ireland constitutional law and statute, in particular the statutory recognition of the Belfast-Good Friday Agreement and [satisfy] the requirements of EU law incorporated into the law of Northern Ireland'.

Sources: The Detail, 25 July 2016; BBC News, 11 August 2016

The second reason is that the UK government needs time to determine its priorities for the withdrawal negotiations and its strategy for negotiating withdrawal. It also needs to decide what its priorities are for the separate but clearly related negotiations on the terms of a new relationship with the EU. What was evident in the aftermath of the referendum was that neither the UK government nor the Leave campaign had a clear and detailed plan for what should happen in the event of a 'leave' vote and what the strategy for negotiations should be.

Third, there is also a need to establish what the UK-wide position is, or at least a position that takes into consideration the different interests of Scotland, Wales and Northern

Ireland. Theresa May has indicated that she wants to agree a 'UK approach' before Article 50 is triggered. Agreement will not be easily achieved given the very strong regional interests that have been expressed not least by the Scottish Government. The clear preference, as the Scottish First Minister, Nicola Sturgeon, has been quick to state, is for Scotland to remain in the EU. The First Minister and Deputy First Minister in Northern Ireland have also been flagging key issues 'of particular significance' to Theresa May (see below). Reaching internal UK agreement is important; without agreement the integrity of the UK could be threatened, particularly with the question of a further referendum on Scottish independence once again on the political agenda.

Where are we and what might happen next?

Withdrawal Negotiations

Once Article 50 is triggered – and the expectation is that it will be triggered – the process of negotiating the terms of the UK's withdrawal from the EU will begin. Article 50 provides for a two year period for the negotiations (see Box). It also sets out the process.

First, the leaders of the other 27 EU member states will, meeting as the European Council but without the UK Prime Minister taking part in their deliberations, adopt guidelines for the negotiations.

Second, negotiations on the terms of withdrawal will take place between the EU and the UK government. For those negotiations to be concluded, they require the agreement of the UK and at least 20 of the remaining 27 EU member states. The list of 20 member states needs to include most of the larger member states. The 20 member states must represent 65% of the population of the EU minus the UK.

Third, the conclusion of the withdrawal agreement needs the consent of the European Parliament. In order to provide that consent a

simple majority of MEPs present at the vote is required provided that one third (251) of the total number of MEPs (751) vote. If there is no majority or not enough MEPs vote, the withdrawal agreement cannot be concluded.

Fourth, the withdrawal agreement will need to be approved by the UK 'in accordance with its own constitutional requirements'. It is assumed that this will require a positive vote in Parliament. What is unclear is whether it will also require a positive vote in the devolved assemblies. Parliament could also decide to put the terms of the withdrawal agreement to the UK electorate in a second referendum.

All this is expected to take place within two years from the notification of the intention to withdraw. It is possible if there is no agreement for the two year period to be extended. Such an extension requires the unanimous agreement of the UK and the remaining 27 EU member states; any member state can therefore veto an extension. If there is no decision to extend the two year period, the UK will cease to be a member of the EU after the two years.

Article 50 TEU

1. Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.

2. A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.

3. The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.

Where are we and what might happen next?

4. For the purposes of paragraphs 2 and 3, the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions of the European Council or Council or in decisions concerning it.

A qualified majority shall be defined in accordance with Article 238(3)(b) of the Treaty on the Functioning of the European Union.

5. If a State which has withdrawn from the Union asks to rejoin, its request shall be subject to the procedure referred to in Article 49.

Negotiating the new UK-EU Relationship

In addition to negotiating its withdrawal from the EU once Article 50 is triggered, the UK and the EU will want to negotiate a new post-Brexit relationship. Formally, that relationship cannot be negotiated until the UK has left the EU, although it is expected that informal negotiations at least will run in parallel to the negotiations on the terms of withdrawal. Either way, these negotiations on the new UK-EU relationship are likely to last much longer than the two years set aside for the withdrawal negotiations. Much depends on what sort of relationship the UK will be seeking (see below) and how tough the negotiations will be.

Statements from EU leaders have already indicated that the EU will not allow the UK to 'cherry-pick' what it wants from the EU. If the UK wants access to the single market, for example, it will have to accept each of the 'four freedoms':

the free movement of goods, services, capital and – importantly – people. The 'leave' campaign's focus on controlling immigration at least suggests that the free movement of people is not something that the UK government will be willing to accept.

Assuming agreement is reached on a new relationship it is likely to require the unanimous approval of the remaining 27 EU member states. It will also require ratification in the UK and in each of the EU member states and the consent of the European Parliament. This will take a number of years since it will involve votes in each chamber of each national parliament as well as some regional parliaments. It might also involve a referendum in one or more EU member state. It is for each member state to determine how it ratifies the agreement. It could also conceivably involve a referendum in the UK.

Where are we and what might happen next?

Other Negotiations

In addition to negotiating the terms of withdrawal and the new relationship with the EU, the UK will also need to negotiate trade agreements with those 53 partners with which it currently has preferential market access arrangements through EU trade and other agreements but which it will lose on leaving the EU. Current partners include: Switzerland, Norway, Ukraine, Russia, Singapore, Israel, Vietnam, South Korea and Mexico. Being outside the EU – and assuming the new UK-EU relationship does not involve the UK being part of the EU's customs union – the UK will be free to negotiate trade agreements with other partners as well. These include US, China, India, Australia and New Zealand with which the EU is

yet to conclude free trade agreements. Before all this there will have to be negotiations on updating the UK's membership of the World Trade Organization (WTO) to reflect the fact it will have left the EU.

Other negotiations will be internal to the UK and cover arrangements for what happens to powers repatriated from the EU. Key questions arising from the devolution settlements will be what powers need to be and should be devolved? There will also need to be negotiations on what central finances follow to administer and fund these new policy competences and policies to replace those of the EU. Obviously important areas include agricultural policy.

Where are we and what might happen next?

The role for Northern Ireland in forthcoming negotiations

Each set of negotiations is important for Northern Ireland. The terms of withdrawal – the divorce settlement – will govern issues such as budget payments, arrangements for current involvement in EU programmes (e.g. research projects) and the rights of UK citizens in the EU and vice versa. The negotiation on the new UK-EU relationship will be the key negotiation since it will determine among other things: what access Northern Ireland producers will have to the EU – and importantly the Republic of Ireland – market; whether there will continue to be free movement of workers across the border; whether it will be possible to offer services across the border; what involvement there will be – if any – in EU programmes; what EU standards will need to be met in order to trade with EU partners.

The trade negotiations with third countries and regional trade organizations will determine what access Northern Ireland producers will have to their markets and importantly what access will be granted to the UK market, e.g. for

agricultural goods. The internal negotiations will affect devolved policy responsibilities and raise questions about what policies would best suit Northern Ireland.

In this context it is important that the Northern Ireland interest can be defined and articulated. Formal responsibility lies with the Northern Ireland (NI) Executive. Following the May 2016 elections to the Northern Ireland Assembly, the NI Executive comprises MLAs from the Democratic Unionist Party and Sinn Féin (SF) and one Independent. It is led by the First Minister, Arlene Foster (DUP) and the Deputy First Minister, Martin McGuinness (SF). The NI Executive enjoys the support of 67 MLAs (see Table). Significantly the NI Executive does not, as it has in the past, include MLAs from the Alliance Party, the Social Democratic and Labour Party (SDLP) and the Ulster Unionist Party (UUP). The three parties' 36 MLAs form the de facto opposition along with five other MLAs in the NI Assembly.

Party	Seats		First Preferences	
	Seats		Votes	Share
Democratic Unionist Party	38	-	202,567	29.2%
Sinn Féin	28	-1	166,785	24.0%
Ulster Unionist Party	16	-	87,302	12.6%
SDLP	12	-2	83,364	12.0%
Alliance Party	8	-	48,447	7.0%
Green Party	2	+1	18,718	2.7%
People before Profit	2	+2	13,761	2.0%
Traditional Unionist Voice	1	-	23,776	3.4%
Independents	1	-	22,650	3.3%
UKIP	0	-	10,109	1.5%

Source: www.bbc.co.uk/news/election/2016/northern_ireland/results

Where are we and what might happen next?

The NI Executive faces two immediate challenges: firstly, identifying options and agreeing a NI position on what 'Brexit means' and secondly, ensuring that it can have its opinions voiced by the UK government. It is positive to note that Theresa May, echoing her immediate predecessor David Cameron, has insisted that she wants to hear the views of the devolved administration in negotiations. It is a sensible option but requires preparedness and engagement from the devolved administrations. Identifying and establishing positions and then voicing them and having them heard are different and challenging things to achieve. And the challenges are particularly great in Northern Ireland.

This is because the question of 'Brexit' divides the NI Executive. The DUP campaigned for a 'leave' vote with the First Minister, Arlene Foster, welcoming the outcome UK-wide by stating: 'I think this is a good result for the United Kingdom. Our nation is safe.' (BBC Radio Ulster, 24 June 2016). Martin McGuinness, whose Sinn Féin campaigned for a 'remain' vote, responded by saying that 'we now have a situation where Brexit has become a further cost of partition, a further cost of the Union and Sinn Féin will now press our demand, our long standing demand, for a border poll' (Belfast Telegraph, 24 June 2016). Compounding these fundamental differences is the fact that the NI Executive failed to commission any scenario planning for the event that there was a 'leave' vote and so was manifestly unprepared for the outcome. The same can be said for the Northern Ireland Assembly. Neither had contributed in any meaningful manner to David Cameron's efforts to renegotiate the terms of UK membership prior to the referendum or to consider the implications of 'Brexit' for Northern Ireland. Only one substantial report on the economic implications of 'Brexit' was commissioned. Produced by Oxford Economics, it concluded that Northern Ireland was likely to be more vulnerable to any negative economic consequences from Brexit than the rest of the UK.

Since the referendum, efforts have been made to begin to define the interests of Northern Ireland's voters, workers, producers, consumers etc. This has led to a number of key challenges being identified and an initial statement issued to the UK government. In August 2016 the First Minister and Deputy First Minister wrote to Theresa May outlining a number of key concerns, namely: the implications of Brexit for the border and especially for the agri-food industry, the need to ensure business competitiveness through ease of access to trade and labour markets, energy supply, structural funding and funding for the peace process. The concerns were presented as 'initial thoughts' only.

The letter followed a visit to Belfast by Theresa May during which she provided an assurance that the First Minister and Deputy First Minister would be fully involved and represented in the negotiations on the UK's future relationships with the EU and other countries. The letter also highlighted a desire to have full access to discussions between the UK and Irish governments.

The actual mechanics of how Northern Ireland can and will develop a clear sense of what its interests are in the different sets of negotiations and how it will be able to get them voiced remain unclear. Mechanisms are required. A number already exist, such as internal discussions within the NI Executive, NI Assembly debates and Assembly Committee hearings and inquiries. There are also formal if often rather opaque mechanisms for representing interests to the UK government and sharing perspectives with the other devolved regions (Joint Ministerial Committee) and with the Irish government (North-South Ministerial Council).

Then there is the opportunity – indeed need – to widen the range of mechanisms to draw in more interested parties likely to be affected by Brexit so views can be heard beyond official government positions. A number of parties are already making their views known. For example,

Where are we and what might happen next?

representatives from Northern Ireland business organizations have issued a joint statement 'Moving on from Brexit' echoing the concerns raised by the First Minister and Deputy First Minister and calling for access to the single market to be maintained.

How to involve these and other voices in developing the Northern Ireland position demands some creative thinking on who should be involved, when and how, and whether the fora – and which – might and should be limited to Northern Ireland, engage the other devolved regions and involve a cross-border dimension. There is also the question of how else to best promote the interests of Northern Ireland so that they are reflected in the different sets of negotiations.

A further consideration is what role Northern Ireland should have in deciding whether and which negotiating outcome should be approved. Some voices have suggested that the devolved governments and assemblies should have a veto over the triggering of Article 50; a larger number have made the case for them having to be formally consulted on and being granted a veto over the final terms of withdrawal and potentially the new relationship with the EU. This follows from the fact that Brexit will

affect the scope and terms of devolution. In such circumstances, the convention is that the changes demand consultation with and the consent of the devolved legislatures. The principles of consultation and consent need to be upheld so that Northern Ireland can ensure its voice is heard. There is also the point that in the case of Scotland and Northern Ireland the electorates voted 'remain' in the referendum. Is it legitimate for the Scotland and Northern Ireland to be taken out of the EU against the wishes of and on terms not expressly supported by the majority of those who voted in the referendum?

Some voices certainly believe the answer is no. Among them are those who see in Brexit a process that could undermine the Good Friday Agreement and its outworkings. For such voices there would then be good grounds for a border poll. Indeed calls from both parts of the island of Ireland for a poll on Irish unification intensified immediately after the EU referendum on 23 June. The calls were though swiftly rejected by the Secretary of State and others on the grounds that there is little support for change to the current constitutional position of Northern Ireland. Depending on how the Brexit process is handled and what the impacts are that could change.

What are the potential options for Northern Ireland?

Options 1: The Status Quo

Options 2: Partial Brexit

Options 3: Existing Options for Outside the EU

Options 4: A Bespoke Arrangement for Outside the EU

Options 5: No Agreement



Fot. Lyn Gateley





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The UK and Northern Ireland in Brexit: Options

The absence of any UK government or 'leave' campaign plans for withdrawal or the new UK-EU relationship to replace EU membership means there is considerable uncertainty about what shape future UK-EU relations should and will take. That uncertainty is compounded by the fact that many supporters of 'remain' in those parts of the UK – i.e. Northern Ireland and Scotland – that did not return majorities in favour of 'leave' wish to see their votes respected just as much as the 'leave' majorities in England and Wales. The same applies to Gibraltar where citizens have the right to move freely to Spain and establish businesses there.

The uncertainty means that there is scope – arguably a need – to consider a range of options. Most are relationships that the EU has already established with one or more non-member states, or a variant of them. Others are more bespoke; and in some instances the options respond specifically to the situation created by the referendum: a member state that overall has voted to 'leave' the EU but one that comprises a number of constituent parts split on whether they wish to remain in or leave the EU.

Among them are also arrangements based on a form of continued membership of the EU. That Article 50 may not be triggered or the UK may ultimately decide not to leave the EU cannot be ruled entirely. Officially, according

to Theresa May, 'Brexit means Brexit' and the prevailing public and political view is that with the referendum result the UK has embarked on a process that will see it leave the EU. The recently appointed Secretary of State for Northern Ireland, James Brokenshire, has certainly stated that it is hard for him to see Northern Ireland staying in the EU after the vote for Brexit. That said, forms of continued membership merit attention.

All options need to be considered bearing in mind the key challenges Brexit poses for Northern Ireland. Two specific challenges are flagged here; there are many others, for example those discussed in the previous section.

The first centres on the nature and shape of the border between Northern Ireland and the Republic of Ireland in a post-Brexit world; will this continue to be an increasingly soft border or will it as the external border of the EU become increasingly hardened with the UK having opted out of the EU's customs union and with a London government implementing strict immigration controls into the UK?

The second concerns the future status of the Common Travel Area (CTA) between Ireland and the UK: can and will the freedoms enjoyed as part of the CTA be sustained post-Brexit; and if so, how? On her first visit to Northern Ireland as Prime Minister, Theresa

Options for Northern Ireland

May declared that maintaining 'peace and stability will always be of the 'highest priority for my government' and that there would be no return of border checks for people entering the UK from the Republic of Ireland (The Guardian, 25 July 2016). The issue of the CTA had also the previous week been identified as a 'priority' by the Secretary of State for Northern Ireland in the House of Commons on 20 July 2016. How this can be achieved remains far from clear.

The range of options notionally open to the UK for a new relationship with the EU is considerable. A key question is how realistically achievable each is given the negotiating

position of the EU and the capacity of the UK to negotiate successfully. The same applies to Northern Ireland. What is achievable depends very much on its capacity to pursue a particular outcome and the receptiveness of the UK government and the EU to accommodate its preferences. The options presented here each have their attractions and drawbacks. Assessing how realistically achievable each is is beyond the scope of this paper, although some general comments are provided. The list should not be viewed as exhaustive; other options exist and other ideas will emerge. Nor should any preference be inferred on the part of the authors.

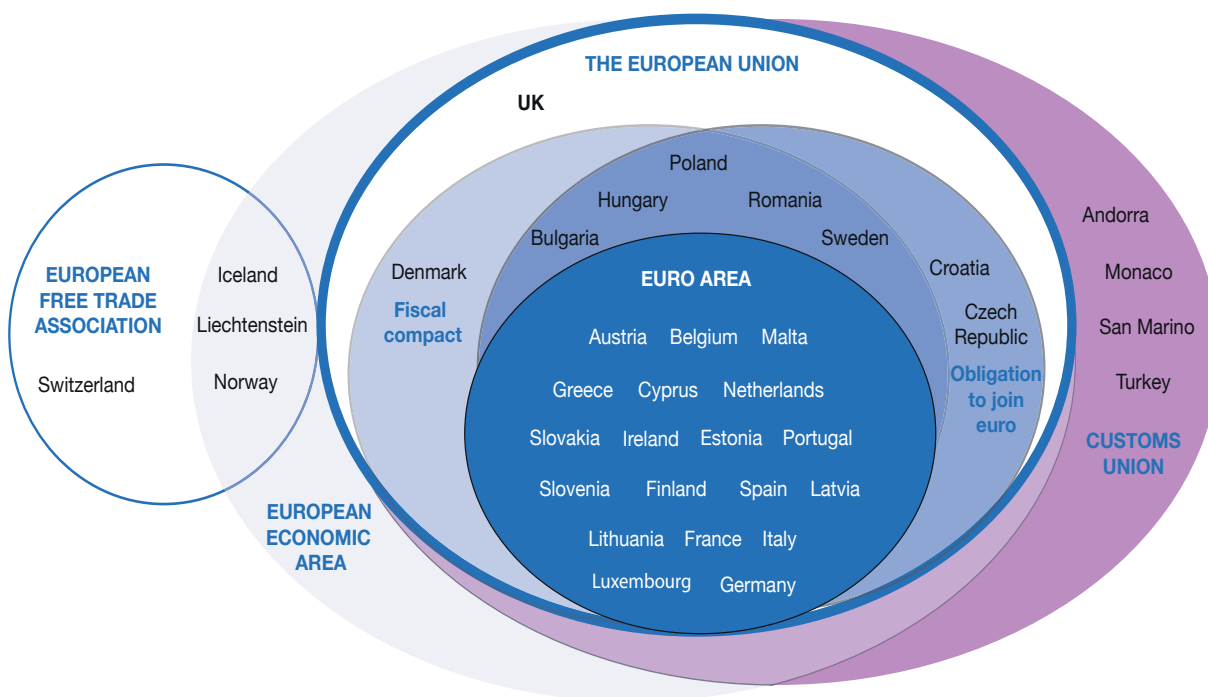
Options for Northern Ireland

Options 1: The Status Quo

A first option is the status quo. If Article 50 is not triggered then the status quo will prevail. If so, the UK would continue as a member of the EU. In doing so, it would retain its special status with assorted opt-outs, but would not, unless it can secure the renewed agreement of the other member states, benefit from the 'new settlement' deal that Cameron secured from the European Council in February 2016.

The status quo would see the UK continue to participate fully in the EU customs union and the single market and by extension the European

Economic Area (see below). It would, however, be outside the eurozone and the fiscal compact treaty and keep its opt-out from joining the euro (see Figure). It would also be outside the Schengen area and benefit from opt-out/opt-in arrangements around police and judicial cooperation and aspects of the EU's area of freedom, security and justice. Significantly, the UK would retain existing involvement in decision-making bodies and process. No form of relationship other than membership provides for such involvement.



Europe, the European Union and the United Kingdom in 2016
Source: HM Treasury, 2016

Options 2: Partial Brexit

A second set of options are based on what would be a partial Brexit. In other words, they see the UK remaining in the EU yet with those parts of the UK that voted to 'leave' moving outside key areas of EU integration and cooperation. For their advocates, these options allow the 'remain' votes in the other parts of the UK to be respected and so for Scotland and Northern Ireland to maintain as far as possible existing levels of integration with the rest of the EU.

A first option is the Reverse Greenland option. This draws its inspiration from the departure of Greenland, which is part of Denmark, from the then European Communities in 1985.² The idea of a 'reverse Greenland' envisages the UK remaining in the EU, but not all of its constituent parts doing so. The 'Reverse Greenland' model could see Northern Ireland (alongside Gibraltar and Scotland) opting to stay in the EU while England and Wales leave. The model is the Kingdom of Denmark which comprises three territories, namely Denmark, Greenland and the Faroe Islands. When Denmark acceded to the EEC in 1973, Greenlanders accepted the overall Danish decision to join despite having voted against the idea in a pre-accession referendum. Following the granting of greater autonomy to Greenland in 1979, the island's government took the decision to withdraw from the EEC. As part of the post-withdrawal arrangements, Greenland maintains some links with the EU through Denmark but is not subject to EU rules (except on trade). The effect is that part of the Kingdom of Denmark's territory

is therefore exempted from the obligations of EU membership.

The Reverse Greenland option would see the UK remain an EU member state, yet with England and Wales – and so the bulk of the population – exempted from the obligations of membership. The rest of the UK – Scotland and Northern Ireland (plus Gibraltar) – would remain in the EU, albeit with reduced voting powers and fewer MEPs. The exact status of England and Wales in terms of market access, involvement in the single market etc., would have to be negotiated.

A second option is contained in The Dalriada Document and has been developed specifically to address the different votes in England, Northern Ireland, Scotland and Wales in what was formally an advisory referendum on 23 June 2016. The option envisages the bulk of the UK moving outside the EU and some parts remaining within the EU. The option is predicated on the fact that the UK comprises two existing unions, that of Great Britain and that of Great Britain and Northern Ireland. In each of these unions one partner has expressed their desire to remain in the EU. It envisages a situation where England and Wales secede from, but Northern Ireland and Scotland remain in the EU. This would, as the document notes, have some significant implications, not least a hard customs border in the Irish Sea and between England and Scotland. However, it would respect the votes in the different parts of the UK; it would also keep the UK intact.³

² *Greenland was not the first part of the EU to leave European Communities. Algeria left in 1962 on gaining its independence from France.*

³ *Unlike some other suggestions, such as the idea a 'three-union state of Scotland, Northern Ireland and Ireland (SCINI)'.*

Options 3: Existing Options for Outside the EU

As the debate prior to and especially since the referendum has demonstrated, there are a variety of forms of relationship that have been established by the EU with non-member states. Each of these could provide a model for a new post-withdrawal UK-EU relationship. Each involves different levels of integration and a different set of rights and obligations. That there is a balance of rights and obligations is important to note. It is a reflection of the well-established fact that the EU does not allow non-member states to cherry-pick those aspects of integration that they wish to have as part of any formal relationship.

That said, from a Northern Ireland perspective, it is worth noting that in developing its external relations, the EU has included in a number of relationships special arrangements for particular regions, or at least the option to pursue special relationships. This is the case regarding Svalbard – part of Norway – in relation to the application of the EEA Agreement. Beyond the options given below, there are special arrangements for Kaliningrad in the EU's relations with Russia. So precedents exist for bespoke arrangements for specific regions.

The most developed form of relationship the EU has with non-member states in is the European Economic Area (EEA). This governs the EU's relations with Iceland, Liechtenstein and Norway. Indeed, it is sometimes referred to as the 'Norway Option'. Originally, when first established, the EEA also involved Austria, Finland and Sweden, but they soon joined the EU. Essentially the EEA extends the EU's single market comprising the free movement of goods, services, capital and people to the non-member states. Iceland,

Liechtenstein and Norway therefore implement EU regulations and directives governing these four freedoms. Although the EEA does not involve participation in the EU's Common External Tariff, the Common Commercial Policy, the Common Agricultural Policy, the Common Fisheries Policy, or the Eurozone, Iceland, Liechtenstein and Norway do also implement regulations and directives in a range of so-called 'flanking policies' designed to assist the smooth functioning of the single market. These policies cover, for example, the environment, competition, consumer protection, safety standards, and public procurement. Important to note is that EEA participants are obliged not only to adopt existing EU regulations and directives, but also future ones relevant to the functioning of the EEA. Iceland, Liechtenstein and Norway also participate in various EU programmes (e.g. Erasmus+ and Horizon 2020) and make significant financial contributions to them and in support of reducing social and economic disparities in the EU. None of these states, however, has a say on the adoption of new EU legislation. They have no representation in the EU's decision-making institutions or processes. At best they are consulted on Commission proposals for legislation. Moreover, failure to adopt relevant new EU legislation can lead to suspension of the EEA. Legislation is expected to be interpreted in line with the jurisprudence of the EU's Court of Justice in Luxembourg.

The attraction of the EEA is full access to the single market.⁴ Free movement of goods is subject, however, to some controls flowing from the fact that the EEA does not involve EU non-member states in the EU's customs union. Trade is therefore subject to customs controls

⁴ Iceland, Liechtenstein and Norway also participate in Schengen. However, this is not an obligation of participation in the EEA and is decided and regulated separately. If the UK were to join the EEA it would not be obliged to join Schengen.

Options for Northern Ireland

and businesses are expected to be able to prove the origin of their goods. The same applies for agricultural goods given these are not automatically covered by the principle of free movement. If the UK opted for the EEA, there would need to be some form of customs controls between Northern Ireland and the Republic of Ireland. There would also be financial costs to the UK. To join the EEA as currently constituted, the UK would need the agreement of all EU member states; it would also have to re-join the European Free Trade Association (EFTA), a process that would require the agreement of its existing members: the three EEA participants as well as Switzerland which has not joined the EEA.

Instead Switzerland has its own set of bilateral agreements with the EU. These constitute the so-called Swiss Option and cover a range of issues designed to secure Switzerland access to the EU single market. Access covers most trade in goods but some agricultural goods remain outside the scope of the agreements and Switzerland has more limited access to trade in services than EEA participants. It does not have full access to the single market for its banking sector, for example; the same is true of other parts of the services sector including insurance. Switzerland does not have any access to the EU market in financial services.

Like Iceland, Liechtenstein and Norway, Switzerland contributes financially so that it can participate in the EU's research and education programmes. As with the EEA, Switzerland has no involvement in the EU's institutions or decision-making processes. Unlike the EEA, however, it has no right of consultation. It also sits outside the EU customs union so customs controls still must be applied. However, unlike its fellow EFTA member states, it is not obliged to adopt new EU legislation regarding the single market but is expected to ensure that its domestic legislation is aligned with the relevant EU regulations and directives. Examples include competition policy and environmental policy. Failure to comply can lead the EU to block Switzerland's access to the single market. Indeed

a number of Switzerland's bilateral agreements with the EU are linked through a so-called guillotine clause meaning that failure to meet in full obligations under one agreement can lead to the suspension of rights under the others. This has been threatened following the Swiss referendum in February 2014 on introducing immigration quotas including on EU nationals. This clearly contravenes the provisions in the agreement on the free movement of persons. The linked agreements include those covering agriculture, research and civil aviation.

The third option is the Turkey Option. Where this differs from the EEA and the Swiss options most clearly is in Turkey's participation in the EU's customs union. This means that in exchange for tariff- and quota-free access to the EU market for industrial goods, Turkey not only provides the same access to its own market for EU goods, it also applies the EU's external tariff on its trade third countries.

While the custom union option may bring market access it does not mean that Turkey has full access to the single market. For example, agricultural goods and services do not form part of the customs union. Turkey also has no say on the tariffs it has to impose on goods it imports from non-EU countries, as it has to apply the EU's common external tariff to those goods (and is not involved in setting it). This acts as a significant constraint on the development of its own trade agreements with other partners and a key reason why there have been calls for the UK not to consider a customs union option. Also, Turkey is expected to adopt EU rules in relation to competition policy and environmental policy and align with EU state aid rules. The existing agreement between the EU and Turkey allows for limited migration to the EU for Turkish nationals, but not free movement. Even visa-free travel for Turkish citizens has still to be conceded. Turkey does not make any contributions to the EU budget; it has no say in EU decision-making.

From a Northern Ireland perspective, a key attraction of a customs union option is that would limit the need to impose customs controls.

Options for Northern Ireland

However, unless accompanied by the free movement of people, border controls of some form would be needed to ensure immigration into the UK could be controlled.

A fourth option is the Canada Option and the recently negotiated – but still to enter in to force – Comprehensive Economic and Trade Agreement (CETA). It is one of the EU's most comprehensive and ambitious trade deals ever agreed with a third party. If approved, CETA will eliminate 98% of tariffs between Canada and the EU. The agreement also removes restrictions on access to public contracts and opens up the services market in areas such as postal services and maritime transport. The agreement ensures EU standards in areas such as food safety and worker's rights are upheld and provides for guarantees that economic benefits do not come at the expense of the environment or consumers'

health and safety. Canada is neither required to contribute to the EU budget nor expected to sign up to the EU rules on the free movement of people. There are, however, some limitations and exceptions to the CETA agreement: tariffs and quotas will remain in place for some agricultural products; trade in services is only partially liberalised; and there are a considerable number of 'reservations' within the deal. Canada's ability to take advantage of the EU financial services passport is dependent on Ottawa establishing a presence in the EU and respecting EU rules in this area.

The attraction of a CETA-type option is market access. However, there are restrictions on the scope of free trade, notably as regards agricultural goods; and customs and immigration controls would have to be imposed.

Options 4: A Bespoke Arrangement for Outside the EU

Existing discussions of the above options have often, particularly in regard to the EEA, involved ideas for more and less advanced variants of them. It has, for example, been suggested that the UK join the EEA as an interim option so as to provide more time to negotiate a post-withdrawal relationship with the EU, and potentially something more bespoke for the UK.

Such a bespoke arrangement could combine different elements of the above arrangements or entail something significantly different. The political preferences of 'leave' campaigners certainly point to the desirability of something bespoke. While access to the single market for goods, capital and services is desired, there is no apparent wish to maintain the free movement of persons or workers. Consequently there is opposition to the EEA option. And this is before consideration is given to the lack of any decision-making role.

Whether a bespoke arrangement that deviates significantly from any of the options above can be established for the UK, has to be questioned. EU leaders have been quick to warn that there can be no 'cherry-picking' which aspects of market access and integration a non-member state can have in a relationship with the EU. The line has been particularly strongly stated with regard to opting out of the free movement of workers but otherwise being involved in the single market via the EEA. The warnings should be heeded. No existing relationship has involved the sort of 'pick and mix' approach that some 'leave' campaigners and commentators believe

can be pursued. It should be noted as well that any concessions which the EU might make to the UK will have to be ones that it will be willing to offer to others. This is expected to mean further constraints on what the EU is willing to offer the UK

A bespoke arrangement for the UK clearly has its challenges. So too does achieving a bespoke arrangement for Northern Ireland within whatever relationship the UK manages to establish with the EU, assuming that this is what might be sought. That said, special status arrangements for particular geographical regions or entities are not unknown either within the EU or in its external relations. On the former, special arrangements were in place for East Germany throughout the Cold War; and the case of Greenland has already been noted. Various special arrangements are in place for the Åland islands, an autonomous region of Finland, for Akrotiri and Dhekelia, the two British Overseas Territories and 'Sovereign Base Areas' on Cyprus, and for others. Within the EU's external relations, Kaliningrad enjoys special status in EU-Russia relations because of its geographical location. Liechtenstein has a number of 'opt-outs' within the EEA and 'special solution' on free movement of workers. There are also special arrangements in place governing the position of northern Cyprus in the context of Turkey's participation in the EU's customs union. Were a bespoke arrangement reflecting Northern Ireland's geographical location to be sought, precedent suggests that agreement could be reached.

Options for Northern Ireland

Options 5: No Agreement

This all assumes a new UK-EU relationship is established. What options does the UK have, however, if no agreement is reached? A first point to make is that the UK would not be able to conclude bilateral trade agreements with individual EU member states, including the Republic of Ireland. The EU is a customs union and has a Common Commercial Policy; this means trade agreements have to be with the EU as a whole and the EU's Common External Tariff would be applied to UK exports to the EU. The UK would be able to impose tariffs on imports from the EU.

Such tariffs would have to comply with the rules of the World Trade Organization (WTO).

These rules will apply to the UK on leaving the EU and they set limits on the maximum tariffs that can be applied to trade in goods. Over the last twenty years there has been a steady and phased reduction in tariffs and a move away from import restrictions such as quotas. The average tariff on industrial goods has dropped of 6.3% to 3.8% with fewer products being charged high duty rates. The WTO also provides a forum for governments to negotiate trade agreements and settle trade disputes.

The UK would also be able to conclude trade agreements with other non-EU countries, provided the agreements conformed to WTO rules.

Options for Northern Ireland

Options – An Overview

	Free Movement				CAP	CFP	Flanking Policies	Customs Union	Research Funding	Decision Making	Financial Contribution
	Goods	Capital	Services	People							
Reverse Greenland											
Dalriada											
European Economic Area											
The Swiss Model											
Customs Union – the ‘Turkey model’											
Free Trade – Canada option											
Bespoke Agreement											
The World Trade Organisation											



= included



= potentially included



= not included

What are the issues Northern Ireland must consider?

Agriculture

Fisheries

Environmental policy

Energy policy

Trade and investment

The border, the free movement of people, immigration and the Common Travel Area

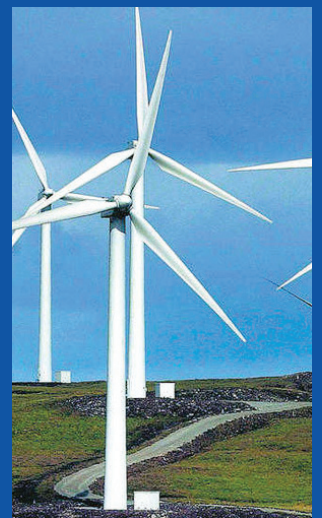
The border and free movement of goods

Peace funding and cross-border cooperation

Structural funding

Research and development / higher education

Citizens' rights





CENTRE FOR DEMOCRACY
AND PEACE BUILDING



Issues for Northern Ireland

The prospect of a UK withdrawal from the EU and efforts to negotiate a new UK-EU relationship raises many issues and challenges. For Northern Ireland, owing not least to its geographical location, its status within the devolution settlement, its economic structure and its recent history, there are particular issues for this part of the UK to be considered and addressed, a reality that is not always appreciated further afield, especially in Westminster and Whitehall.

A key challenge for all concerned is to recognize the issues and think creatively about how they might be addressed in the light of the EU referendum outcome. In terms

of developments and approach to Brexit discussions and negotiations attention should also be given to the terms of the Good Friday Agreement and its status as an internationally recognized treaty. What follows are a range of issues of particular concern. For each issue a number of questions about the implications of a UK withdrawal from the EU are raised. In some cases, a UK withdrawal from the EU could see the transfer of competence devolved to Northern Ireland which raises additional questions for consideration.

The lists of issues and questions are far from exhaustive.

Agriculture

The EU is the world's largest agricultural trader. The UK is a net-importer of agri-food products, importing almost twice as much from other EU member states than it exports to them. The EU market is important for the UK farming sector and accounted for some £13 billion worth of products in 2014. Agriculture is one of Northern Ireland's most important industries in terms of both an annual turn-over of some £4.5 billion and a workforce of some 29,000 people. Northern Ireland is more dependent on the agricultural sector (including the agri-food business) than any other area of the UK. It shares much in common with agriculture in the Republic of Ireland. The Common Agricultural Policy (CAP)

was established in 1962. The budget for EU agricultural spending in the period from 2014-20 is an estimated €1 trillion. Some 40% of the EU's entire budget is directed towards agriculture. It has been estimated that for every pound earned by Northern Irish farmers, some 87 pence comes from the EU'S Single Farm Payment. Challenges were already lying ahead for Northern Ireland farming sector as the CAP continued to undergo major reform, focusing much less on price support and seeking to agriculture competitive and to ensure better quality goods and lower prices for consumers. What are the issues for the farming community in Northern Ireland after Brexit?

1. How does the UK withdraw from the CAP?
2. What happens to an estimated 40,000 legal acts that are in force under the EU's CAP? EU rules cover issues such as animal health, welfare and transportation of animals, hygiene, tagging of animals and disposal of carcasses.
3. What should a post-Brexit agricultural policy look like?
4. Should subsidies be maintained?
5. Will the Northern Ireland Executive assume responsibility for developing and administering a Northern Irish agriculture policy following Brexit? How will it manage these responsibilities?
6. What funding mechanisms would be put in place to replace the payments that currently come from the EU and specifically, the CAP? Will the level of support and funding arrangements be the same as in 2015?
7. Can arrangements be put in place to allow Northern Irish agricultural products to be exported to the EU tariff- and quota-free?
8. How much do employers in Northern Ireland within the agricultural and horticultural sectors rely on migrant and/or seasonal workers from the EU? How can the supply of such workers be maintained post-Brexit?
9. What would the impact be for the agricultural sector on the island of Ireland as a whole of having Northern Ireland outside the EU?
10. What will the impact be of any post-Brexit tariffs, quotas and customs controls on supply chains and their sustained economic viability?
11. What opportunities arise from a post Brexit Northern Ireland for consumers and farmers?
12. How might a move away from CAP subsidies affect the environment and countryside management schemes?
13. What will the impact of Brexit be on agricultural and food prices and what will the impact be on the economy and family incomes?
14. How can the interests of Northern Ireland's agricultural producers and processes best be identified and represented in negotiations on a new UK-EU relationship?

Fisheries

The EU's Common Fisheries Policy (CFP) was established in 1970. This policy was designed to manage the issue of a finite resource (fish) whose own 'freedom of movement' necessitated the imposition of national quotas to prevent overfishing. The conservation of fish stocks lies at the heart of the CFP. However, the introduction of quotas (Total Allowable Catches) as well as limitations to fleet capacity and the number of days that boats could be put to sea were not well received within the industry. Today, the CFP is more focused than ever on helping fishing communities across the EU; seeks to assist in the transition to sustainable fishing; supports coastal communities in diversifying their economies; and finances projects that create new jobs and improve

quality of life along European coasts. To realise these aspirations the CFP provides finance through the European Maritime and Fisheries Fund (EMFF) for the sector. The UK receives some €243 million in the period from 2014-20. The fishing industry in Northern Ireland is largely centred around Portavogie, Kilkeel and Portaferry in County Down and employs some 800 people. Fishing is a devolved responsibility and the Northern Ireland Executive and the Department of Agriculture, Environment and Rural Affairs have responsibility for ensuring that EU rules are followed and liaising with the other devolved UK regions in formulating a UK position ahead of meetings of the Council of the European Union.

1. Will a post-Brexit UK regain complete control over the greater part of the northern European fishing grounds (control of 200 nautical miles from British coasts)?
2. Could the UK follow the examples of Norway, Iceland and the Faroes and be in a position to create its own fishing opportunities?
3. Would the current funding streams from the CFP and the EMFF be replicated from Whitehall or the Northern Ireland Executive at the same levels, in terms of research, policy development and subsidies?
4. Will boats from ports in Northern Ireland be able to fish freely or will they face restrictions about their access to EU territorial waters and how much they can fish?
5. How would the limits of EU and UK waters be determined?
6. How easy would it be to establish bilateral access and trade agreements with the EU and other partners (e.g. Norway)?
7. Would the UK remain a member of all key international fishing bodies?
8. How would access to EU waters work?
9. Would the UK have extensive market access to the EU or would new barriers to trade emerge if the UK only secured 'most favoured nation' status under WTO rules?
10. How can the interests of Northern Ireland's fishing and fish-processing industries best be identified and represented in negotiations on a new UK-EU relationship?

Environmental policy

Much environmental legislation in the UK – 200+ pieces – has originated from the EU. It covers areas such as waste management, air pollution, bathing and water standards, nature and biodiversity legislation, chemical safety, and air and noise pollution. Waste has been a particular issue for Northern Ireland. The Northern Ireland Executive and the newly created Department for Agriculture, Environment and Rural Affairs will be responsible for developing an environmental

policy for Northern Ireland post-Brexit. Decisions may have to be made on which EU directives on environmental policy should be retained and which might be removed from the statute books. There has been a substantial decrease in the amount of new EU environmental legislation being pursued over the last 15 years and especially since 2010. However, the issue of the existing environmental obligations has been a challenging one for Northern Ireland.

1. Brexit should provide an opportunity for the UK to determine the scope and detail of environmental regulation that suits it. Will it be able to do this?
2. What should UK environmental policy outside the EU look like?
3. What principles should underpin a post-Brexit UK environmental policy?
4. How much scope will Northern Ireland have to deviate from a UK policy?
5. What should the priorities of environmental policy be in Northern Ireland?
6. How might those priorities be funded?
7. What happens to existing EU environmental law (both directives and regulations) post-Brexit? Might they be annulled? If so, how and when?
8. What happens in cases where EU laws implement UK obligations under international conventions – e.g. the Convention on International Trade in endangered species of wild fauna and flora?
9. The European Commission currently co-ordinates much scientific and technical research which forms the basis for EU environmental policy. What provision will be made post-Brexit for research funding? Will the UK continue to participate in EU research programmes?
10. How will the UK influence international environmental agreements? Will it have a stronger or less influential voice outside the EU?
11. How might cross-border environmental issues on the island of Ireland be best addressed?
12. How can Northern Ireland's environmental interests be most effectively identified and represented in negotiations on a new UK-EU relationship?

Energy policy

Energy is fast becoming one of the most pressing issues for Europe given growing demand, the persistence of volatile prices and the possibility of disruptions to supply. The EU's energy policy is constructed around three core aims that centre on the security of supply (especially in terms of gas and oil), the competitiveness of the energy sector (e.g. electricity and gas suppliers) and finally, sustainability. Energy flows across national borders within the EU. The European Commission is pursuing its own plans (Europe 2020) for an

'energy union' that seeks to secure affordable energy for EU citizens, places emphasis on the need for climate friendly energy, lower carbon emissions, combats global warming and aims to enable Europe to speak with a single voice on global energy matters. The idea of an Energy Union has previously been welcomed by the UK government. Outside the EU, the UK will need to pursue its own energy policy. What might that post-Brexit policy look like and how will it affect and address the needs of Northern Ireland?

1. Could a post-Brexit UK repeal all existing EU regulations on energy (such as renewables targets), and if so, would this benefit or damage the UK?
2. Would a post-Brexit Northern Ireland still be able to access the EU's energy market?
3. Would tariffs be imposed on energy imports? And to what extent would this lead to higher energy costs for both consumers and businesses in Northern Ireland?
4. How will Brexit impact on the supply of electricity from the Republic of Ireland and the idea of a single market for electricity on the island of Ireland?
5. How much would Brexit impact on the energy sector in the Republic of Ireland, particularly given the growing importance of gas and electricity connectors and the reality that much of the island of Ireland's energy needs is imported?
6. Would Northern Ireland be excluded from potential sources of EU funding under the EU's ambitious plans for renewables and plans to cut emissions?
7. Would Brexit reduce restrictions on fracking as an alternative source of energy for Northern Ireland?
8. What will be the consequences of Brexit be for policy on the development of alternative and renewable sources of energy?
9. How can Northern Ireland's energy needs be best secured following a UK withdrawal from the EU?
10. What processes should be used to ensure that Northern Ireland's energy interests are most effectively identified and represented in negotiations on a new UK-EU relationship?

Trade and investment

Through UK membership of EU, Northern Ireland businesses currently have access to a single market of almost 500 million people. Free trade means that goods can be traded free of quotas and tariffs. The existence of a near complete 'single market' means that, in principle, services and capital also move freely within the EU. According to the Office for National Statistics 44.6% of UK exports of goods and services go to the EU. The figure for exports from Northern Ireland in 2013 was 56% according to HM Revenue and Customs.⁵ The EU is therefore Northern Ireland's main international export market. Within these figures, the Republic of Ireland accounts for 37% of total exports meaning the rest of the EU accounts for only 21% of overall exports from Northern Ireland. In 2012, according to government calculations, manufactured goods made up 50% of total exports to the EU with an almost even split between the Republic of Ireland and the rest of the EU.⁶ For services the figures were 39% and 8% respectively; for food and drink they were 91% and 35%. As a source of imports, the EU is Northern Ireland's largest partner, accounting for 55% of imports in 2013.⁷

The Republic of Ireland (28%) was again the largest source, followed by Germany (6%) and the Netherlands (5%). China accounted for 17% and the US for 7% of imports. China did not, however, feature in the top five destinations for exports from Northern Ireland. The US (10%) and Canada (6%) were ahead of France (5%) and Germany (4%).

As a customs union the EU negotiates trade deals with non-member states on behalf of its member states. Most countries have some form of trade agreement with the EU with many providing for either preferential market access or reciprocal free trade. Increasingly arrangements extend beyond free trade in industrial goods to include services. The EU currently has free trade agreements with most European countries and with most countries in the Mediterranean. Trade agreements have also been agreed with South Korea, Canada and countries in Central and South America. A post-Brexit UK is unlikely to remain subject to these agreements or any other trade agreements the EU may conclude in the future (e.g. the proposed Transatlantic Trade and Investment Partnership (TTIP) with the United States).

1. Post-Brexit how would trade between the UK and the EU be regulated?
2. Would free trade continue?
3. Would tariffs and quotas be reintroduced?
4. Would the principles of the free movement of goods, services and capital be maintained in trade relations between the UK and the EU?
5. Would any changes to existing free trade arrangements affect all trade or only certain sectors?
6. How might different sectors be affected?
7. How might any uncertainty surrounding the future of the trade regime between the UK and the EU affect business, consumer and investor confidence in the Northern Ireland economy?
8. How far might trade agreements with alternative trade regimes (e.g. European Free Trade Association, North Atlantic Free Trade Agreement) provide significant opportunities for growth in trade for Northern Ireland?
9. How can opportunities for expanding trade with non-members of the EU be maximised?

⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/286202/RTS_Q4.pdf

⁶ <https://www.detini.gov.uk/sites/default/files/publications/deti/measuring-ni-exports-report.pdf>

⁷ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/286202/RTS_Q4.pdf

Issues for Northern Ireland

10. How will UK access to foreign markets be affected by leaving the EU?
11. How quickly can replacement deals be negotiated?
12. Will the UK be able to secure the same level of trade access to foreign markets as it currently has as an EU member state?
13. Does the UK government have sufficient administrative capacity to negotiate and manage replacement trade deals with all partners?
14. Will trading partners be willing to conclude bilateral deals with the UK?
15. How long will it take to conclude bilateral trade agreements to replace current arrangements?
16. With which trading partners would free trade most benefit Northern Ireland?
17. With which trading partners would free trade prove most challenging economically for Northern Ireland?
18. How does Northern Ireland ensure its interests are effectively represented in UK trade negotiations with the EU and with non-EU partners?

The border, the free movement of people, immigration and Common Travel Area

The Irish border is the only land border that the UK shares with another state. Since the launch of the single market in 1992 and the onset of the Irish Peace Process in 1994 the Irish border has been reconfigured as an open, soft border. Consequently, Irish border customs posts, British Army watchtowers, and Security Force installations and checkpoints were surplus to requirements. Secondary cross-border roads which were cratered or blocked with bollards during the Troubles were refurbished and re-opened. The result is that the physical manifestation of the Irish border itself is hardly discernible and there is freedom of movement across it.

The free movement of people is a central plank of the EU's single market. It allows EU citizens to travel, live and work in any EU member state. The scale of free movement has increased substantially since the 2004 enlargement which admitted ten new member states into the EU. This resulted in large numbers of EU migrants seeking to live and work in more economically prosperous member states such as the UK.⁸ The net economic benefit of free movement for the UK has been largely positive, but the political impact has been concerning. Discontent with the numbers entering the UK and their impact on the lives and livelihoods of UK citizens has seen a growth in support for political parties opposed to immigration and was a key factor behind the 'leave' vote in the EU referendum. This opposition targets not just

EU migrants, but also non-EU citizens seeking asylum. Leaving the EU, provided the UK opts out of the free movement of people, would allow restrictions and limits to be imposed on the inward migration of EU citizens to the UK. To do this effective immigration controls will be needed.

Net inward migration to Northern Ireland has increased since the early 2000s after a long period of net outward migration. Despite this reversal, Northern Ireland still has the UK's lowest immigration rate. The arrival of migrants (EU and non-EU) however, has not been comprehensively managed. Key strategies, including for a Racial Equality Strategy and a Refugee Integration Strategy, for example, have not been introduced. A number of political parties have campaigned against immigration or at least for tighter immigration controls. One obstacle to achieving tighter controls is the absence of a border. Pursuing immigration controls at the Irish border is compounded by the existence of and support for the Common Travel Area (CTA) which effectively allows for unhindered movement of UK and Irish citizens on the island of Ireland and between the Republic of Ireland and the UK. If a post-Brexit UK opts out of the free movement of people then the Irish border becomes the external border of the EU. This poses serious questions for the sustainability of the CTA with all the economic, political and social consequences that may entail.

⁸ Like the Republic of Ireland (and Sweden), the UK government decided not to impose transitional controls of up to seven years on free movement from new EU member states.

Issues for Northern Ireland

1. Will a post-Brexit UK develop a 'tougher' immigration policy and what would the model look like – e.g. Australian points system, 'blue cards'?
2. What would be the effect of this new immigration policy on EU nationals seeking to come to the UK?
3. What role can Northern Ireland play in shaping this policy?
4. Will a new UK immigration policy require the imposition of restrictions on the movement of people between Northern Ireland and the Republic of Ireland?
5. Will the effective implementation of such restrictions necessitate border controls?
6. How might the CTA be affected by such restriction and controls?
7. Can a 'special status' be agreed for the border and by whom?
8. What will be the impact of restrictions on cross-border workers on the island of Ireland?
9. What will the effect of restrictions be on local employment and economic activity in border areas?
10. Can the continuation of the CTA be reconciled with the UK abandoning the free movement of workers and persons in its new relationship with the EU?
11. Will the EU place restrictions on non-EU citizens from Northern Ireland wishing to live and work in other EU member states?
12. Should Northern Ireland press for EU workers currently resident in Northern Ireland to have their current rights recognized and upheld in the event of Brexit?
13. What does a new more restrictive immigration policy mean for employers, particularly those reliant on seasonal migrant labour?
14. How does Northern Ireland ensure issues relating to the border and to the CTA are effectively represented in the withdrawal negotiations and the negotiations on a new UK-EU relationship?
15. How does Northern Ireland ensure its interests are effectively represented and reflected in the development of UK immigration policy post-Brexit?

The border and free movement of goods

If the UK through Brexit opts out of the EU's customs union, the EU's external tariff will be applied to Northern Irish goods entering the Republic of Ireland. The UK will presumably apply tariffs and potentially quotas to EU goods entering Northern Ireland. Separate regimes can be expected for industrial and processed

goods as well as agricultural produce. The administrative capacity to collect tariffs and impose customs controls on goods crossing the Irish border will be required. The capacity to ensure rules of origin on goods originating in part or wholly from another non-EU member states are upheld will also be needed.

1. To what extent can tariffs be gathered and quotas be enforced without physical border controls?
2. How might physical border controls – if needed – be organized and where?
3. How costly will new customs requirements be for importers and exporters?
4. How much will new customs controls cost to administer? Who will bear the cost?
5. At what level should the UK set tariffs and quotas – if at all – on goods imported from the EU?
6. Might, indeed should, Brexit see the introduction of export tariffs and quotas?
7. Can a special status for Northern Ireland be established whereby customs controls are not imposed on cross-border trade?
8. Can special rules of origin be established for trade between Northern Ireland and the Republic of Ireland, e.g. where trade in agriculture and the food-processing industry are concerned?
9. Could Northern Ireland remain part of the EU's customs union even if the UK opted out of it?
10. How can Northern Ireland's trading interests be most effectively identified and represented in negotiations on a new UK-EU relationship?
11. How might these interests be most effectively identified and represented in negotiations on new trade arrangements with non-EU member states?

Peace funding and cross-border cooperation

Cross-border cooperation was embedded through the creation of a cross-border, North-South institutional infrastructure under the terms of the 1998 Good Friday Agreement. It consists of the North South Ministerial Council and its Implementation Bodies. EU funding, principally through the INTERREG and Peace programmes, has been essential for the creation of living cross-border, North South institutions, as well as cross-border hard and soft capital projects. Many of the soft capital projects have a peacebuilding objective. Respected evaluations of such projects have found that they have made a significant contribution to peacebuilding in the Irish border region over the past two decades.

Through its Peace programmes the EU has provided sustained support for peacebuilding in Northern Ireland and the border counties of the Republic of Ireland, much of it at the local community level. Peace I (1995-1999), Peace II (2000-2006), Peace III (2007-13) and Peace IV (2014-2020) represent a sophisticated and sustained example of 'peace-building from

below' to complement rapprochement at the political elite level. Many funded projects have promoted cross-community and cross-border dialogue with the peacebuilding goal of accepting differences and recognising commonality. Evaluations of Peace programme projects have detailed many positive experiences, for example, through engagement in discussions on British/Irish histories, participation in storytelling for children, and in the organisation of cross-community, cross-border sporting and musical events. A cross-border dimension was appreciated by many project leaders from Protestant, unionist or loyalist backgrounds because it provided the opportunity to engage with those perceived to be from a 'less threatening' Irish nationalist background. Such engagement is a potentially important precursor to improved cross-community relations in Northern Ireland. For others, the cross-border dimension provided a welcome opportunity to participate in a society unmarked by territorial segregation and disputes. What happens with Brexit?

1. Could cross-border cooperation continue in the event of the UK leaving the EU?
2. If so, what would be the obstacles to overcome?
3. What would be the implications of Brexit for cross-border institutions?
4. How would EU funding for cross-border cooperation be affected?
5. What would be the implications for peacebuilding?
6. Will EU cross-border funding (INTERREG) be replaced by national/regional authorities?
7. What will happen to the Special EU Programmes Body (SEUPB)?
8. How will other cross-border bodies be affected?
9. Will EU Peace funding for Northern Ireland stop if the UK leaves the EU?
10. Is peace funding still needed?
11. How can Northern Ireland's interests regarding peace funding and cross-border cooperation be most effectively identified and then promoted?

Structural funding

The EU structural funds comprise the European Regional Development Fund (ERDF) and the European Social Fund (ESF). In Northern Ireland, the ERDF focuses on improving sustainable economic growth and is designed to promote research and innovation, encourage SME competitiveness and support the shift to a low-carbon economy. The ESF is concerned with promoting social inclusion and combatting unemployment as well as investing in education,

skills and life-long learning. Its core focus remains to boost employment opportunities and encourage labour mobility. Northern Ireland may no longer be identified as an Objective 1 area but as a 'transitional' area still receives financial support under the funds. In the financial period from 2014-20 some €460 million is being directed towards Northern Ireland (including an additional €181 million from the British government).

1. Post-Brexit the UK would lose any entitlement to financing from the structural funds. How will this impact Northern Ireland?
2. How much of an issue would the loss of access to structural funds be for businesses and people in Northern Ireland?
3. Would there be replacement funds financed by the UK government?
4. Is such funding necessary?
5. What would Northern Ireland's priorities be in an environment of reduced structural funding?
6. Could Northern Ireland retain some form of access to the ERDF and the ESF after a Brexit?
7. Would involvement in cross-border programmes (e.g. INTERREG IVC which provides funding for interregional cooperation across Europe under the ERDF) be able to continue?

Research and development / higher education

EU Higher Education activity essentially has two dimensions: student mobility and research funding. Successive Erasmus programmes have provided funding for student exchanges. This has increased opportunities for students at UK universities to study as part of their degrees at universities in other EU member states. These exchanges have also increased the diversity of students studying at UK universities. Free movement and non-discrimination principles also mean that EU students have access to higher education in Northern Ireland on the

same terms as domestic students. In terms of research, successive 'framework' programmes, most recently the Horizon 2020 programme, have provided opportunities for UK universities to access EU funds to support collaborative research with other universities and industry in the EU. Increasingly opportunities have existed to draw on EU funds for collaborations with partners outside the EU. The EU also promotes the protection of knowledge through the adoption of legislation on intellectual property and patents.

1. If a post-Brexit UK is not part of the single market, will EU students continue to take up places at Northern Ireland's universities, especially if they are charged higher, international fees?
2. Will a post-Brexit UK retain access to the EU's research funding programmes? And on what terms?
3. Will the UK government be willing to make financial contributions to the EU budget to sustain such access long-term?
4. To what extent will existing teaching and research collaborations with university partners in EU member states be sustained post-Brexit?
5. What would be the impact on industrial, commercial and academic research activities and capacity in Northern Ireland if the UK is no longer involved in EU research programmes?
6. Should the UK government seek to retain access to the EU's Erasmus programme for student mobility?
7. How might this be funded?
8. What would be the impact of leaving the EU on the protection of intellectual property rights?
9. How can Northern Ireland's interests regarding research and development and higher education cooperation be most effectively identified and then promoted in negotiations on a new UK-EU relationship?

Citizens' rights

Every person holding the nationality of an EU member state is a citizen of the EU. EU citizenship is additional to national citizenship – it does not replace it. All EU citizens enjoy a series of important rights. Many of these are related to the functioning of the single market and include the right to travel freely around the EU, and the right to reside, study and/or work in another EU member state. The right to reside in another EU member state for more than three months requires citizens to meet certain conditions depending on their status as workers, students, etc. EU citizens also enjoy political rights and protections. Citizens are entitled to vote for and

stand as a candidate in European Parliament and municipal elections. They can avail of diplomatic and consular assistance from the authorities of any EU member state when overseas. Citizens may also petition the European Parliament and complain to the European Ombudsman. They have a right of access to official EU documents and may write to any EU institution or body in any Treaty language. The EU also prohibits discrimination, including on the grounds of nationality and so EU citizens enjoy the right to equal treatment. If the UK leaves the EU, it is expected that UK citizens will lose EU citizenship rights.

1. What material impact will the loss of EU citizenship have for UK citizens in Northern Ireland?
2. How will Brexit affect EU citizens resident in Northern Ireland? Should their current rights be extended?
3. What will be the impact of Brexit on UK citizens from Northern Ireland living and working in the EU? Will their rights be extended?
4. What will be the impact of Brexit on Irish passport-holders resident or working in Northern Ireland?
5. What restrictions will Brexit entail on the right of citizens in Northern Ireland to work or study in the Republic of Ireland or another EU member state?
6. How might restrictions on working and residence impact on relations between Northern Ireland and the Republic of Ireland?
7. Will the Common Travel Area (CTA) between Northern Ireland and the Republic of Ireland be maintained?
8. Will other EU member states remove the facility for UK citizens from Northern Ireland to avail of diplomatic and consular assistance from other EU member states while overseas?
9. Will Brexit and the loss of EU citizenship see anti-discrimination safeguards being lost? How will this impact on the equality agenda in Northern Ireland?

Further Sources

Further Sources

The range of sources and commentary on 'Brexit' increases daily. The Briefing Paper already includes embedded links to a range of publications. Analyses and reports among these are listed below alongside other publications that

either have informed the content of this briefing paper or offer other insights into the question of 'what next' as everybody comes to terms with the consequences of the result of the EU referendum result on 23 June 2016

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